



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
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# Press Release

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## **McGRAW: \$20,000,000.00 MISTAKE BY AGENCY LAWYER POINTS UP NECESSITY FOR GREATER ATTORNEY GENERAL OVERSIGHT**

Attorney General Darrell V. McGraw, Jr., responding to public concern over a missed court deadline that resulted in a \$20,000,000.00 liability to the State, stated today that this unfortunate occurrence points up the necessity for greater Attorney General oversight over in-house lawyers retained by State agencies.

The court deadline in question was missed when an employee of the State Tax Department filed, and then forgot about, an adverse administrative decision in a tax case. By the time the Office of the Attorney General was notified of the decision, it was already ten days past the 60-day period for filing an appeal in the Circuit Court. During oral argument before the Supreme Court of Appeals, the Justices agreed that this procedural default would not have occurred if the Attorney General, rather than agency in-house counsel, had been in a position of oversight.

"It appears that the agency lawyer made a once-in-a-lifetime mistake, with terrible consequences," said Attorney General McGraw. "We believe that if the executive agencies of State government utilized the Office of the Attorney General as the Constitution meant it to be utilized – to oversee all legal work of the State of West Virginia – problems such as this would not arise."

Attorney General McGraw noted that the procedural default in question occurred in 2003, well before the tenure of Acting State Tax Commissioner Virgil T. Helton. Since assuming his office, Acting Commissioner Helton has taken decisive steps to increase oversight of the Tax Department's legal division, including expanding the division's interaction with Assistant Attorneys General who do tax related litigation under the supervision of the Attorney General.

"The U. S. Steel Mining case points up the critical importance of Attorney General supervision of agency legal affairs," said Attorney General McGraw. "I am confident that the Legislature will look at this issue promptly and enact the necessary laws to ensure such supervision. In the meantime, my hope is that the Governor will instruct all executive agencies to recognize the Attorney General's constitutional role as the State's lawyer, so that we never have another U. S. Steel Mining Co. situation again."

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